

### **REMARKS**

Claims 1, 4-32 and 35-43 are now active in this application.

It is noted that the Examiner indicates on the PTOL-326 that claims 2, 3, 33 and 34 have been withdrawn from consideration. However, this is an incorrect indication as claims 2, 3, 33 and 34 have been canceled and are not pending. Item 4a) of the PTOL-326 refers to those of pending claims that have been withdrawn from consideration.

### **REJECTION OF CLAIMS UNDER 35 U.S.C. § 103**

Claims 1, 4-32 and 35-43 have rejected under 35 U.S.C. § 103(a) as being unpatentable over Ludwig et al. (UK Patent Application GB 2282506) in view of Pettersson et al. (WO 01/26032).

The rejections are respectfully traversed.

Pettersson et al. (WO 01/26032) is a published international application that has an international filing date of October 2, 2000.

Patents issued directly, or indirectly, from international applications filed before November 29, 2000 may only be used as prior art based on the provisions of 35 U.S.C. § 102(e) in effect before November 29, 2000. Thus, the 35 U.S.C. § 102(e) date of such a prior art patent is the earliest of the date of compliance with 35 U.S.C. § 371(c)(1), (2) and (4), or the filing date of the later-filed U.S. continuing application that claimed the benefit of the international application. **Publications of international applications filed before November 29, 2000** (which would include WIPO publications and U.S. publications of the national stage ( 35 U.S.C. § 371)) do **NOT** have a 35 U.S.C. § 102(e) date at all (*however, such publications are available as prior*

*art* under 35 U.S.C. 102(a) or (b) *as of the publication date*). Specifically, under revised 35 U.S.C. § 374, the international application must be filed on or after November 29, 2000 for its WIPO publication to be "deemed a publication under section 122(b)" and thus available as a possible prior art reference under 35 U.S.C. § 102(e) as amended by the AIPA (see § MPEP 706.02(a) II. B).

Thus, the international filing date of Pettersson et al. does not have a date under 35 U.S.C. § 102(e). Consequently, the only date of Pettersson et al. that the Examiner can rely upon is the international publication date of April 12, 2001. However, this date is after the March 21, 2001 filing date of the present application. Therefore, the published international application of Pettersson et al. is not prior art as to the present application.

In view of the above, the allowance of independent claims 1, 4-32 and 35-43 is respectfully solicited.

## **CONCLUSION**

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Edward J. Wise (Reg. No. 34,523) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any

additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees

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Respectfully submitted,

By 

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